

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS

IN RE: )  
 )  
DAVID L. STEWART, ) Bankruptcy Case No. 03-91011  
 )  
Debtor. )

OPINION

This matter having come before the Court on an Objection to Second Claim of Ruth Elder Claim No. 5 filed by the Debtor on September 18, 2003; the Court, having heard arguments of the parties and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

On August 11, 2003, Creditor, Ruth Ann Elder, filed a second claim in the Debtor's Chapter 13 bankruptcy, designated as Claim No. 5, in which she sought to have a total claim in the amount of \$7,179.85 be allowed as a priority claim for alimony, maintenance, or support owed to a spouse, former spouse, or child, pursuant to 11 U.S.C. §507(a)(7). Claim No. 5 is filed in addition to Claim No. 1, which was previously allowed by this Court's Order of September 18, 2003, finding that Claim No. 1 was a priority, unsecured claim in the amount of \$8,839.70.

Claim No. 5, filed by Creditor, Ruth Ann Elder, consists of two components. The first part consists of attorney's fees which the Claimant asserts were incurred in the amount of \$5,058.25, as part of her litigation to receive child support payments from the Debtor. The second part of the claim consists of mileage and time expenses of the Claimant, in the amount of \$2,121.60. As for the claim for the Claimant's time and mileage expenses, the Court must find that the claim, in the amount of \$2,121.60, is not sufficiently documented, nor supported in the evidence to be allowed as either a priority or a general unsecured claim.

In addressing the additional claim for attorney's fees in the amount of \$5,058.25, the Court has reviewed the record of Debtor's bankruptcy proceeding; the record of the adversary proceeding in Case No. 02-90879, Adversary No. 02-9020; and the documentation and proceedings referring to Claim No. 1, filed in the instant case on April 11, 2003; and the evidence and documentation submitted by the Claimant, Ruth Ann Elder. In so doing, the Court finds that the claim for additional attorney's fees is not supported in the record and is not supported by the evidence presented by the Claimant. The fees in question were not awarded against the Debtor and in favor of the Claimant in any proceeding before this Court or before the State Court in the divorce proceedings. As such, the Court must conclude that these fees are a debt of the Claimant and not a debt of the Debtor to be paid in these Chapter 13 proceedings. Therefore, the Court finds that Claim No. 5, filed by Ruth Ann Elder on August 11, 2003, must be denied in its entirety.

ENTERED: November 24, 2003.

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GERALD D. FINES  
Chief United States Bankruptcy Judge

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IN RE: )  
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DAVID L. STEWART, ) Bankruptcy Case No. 03-91011  
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ORDER

For the reasons set forth in an Opinion entered on the 24th day of November 2003;

IT IS HEREBY ORDERED that:

A. Objection to Second Claim of Ruth Elder Claim No. 5 filed by the Debtor on September 18, 2003, is ALLOWED; and,

B. Claim No. 5, filed by Claimant, Ruth Ann Elder, on August 11, 2003, is DENIED in its entirety.

ENTERED: November 24, 2003.

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GERALD D. FINES  
Chief United States Bankruptcy Judge

COPY OF OPINION AND ORDER SENT TO:

Frank H. Byers, II  
Attorney at Law  
P.O. Box 2227  
Decatur, IL 62524

Ruth Elder  
750 Lost Bridge Road  
Decatur, IL 62521

Asher O. Geisler  
Attorney at Law  
P.O. Box 1547  
Decatur, IL 62525

James R. Geekie  
Trustee  
P.O. Box 65  
Paris, IL 61944

U. S. Trustee  
Becker Building, Room 1100  
401 Main Street  
Peoria, IL 61602

DATED: November 24, 2003.

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Deputy Clerk